

Application No. 10/560,864
Paper Dated: July 31, 2008
In Reply to USPTO Correspondence of July 1, 2008
Attorney Docket No. 0470-053605

REMARKS

In response to the Office Action dated July 1, 2008, Applicants hereby elect Group II, claims 33-36, with traverse.

Applicants respectfully traverse the Examiner's restriction requirement. A requirement for restriction is only proper when a serious burden is placed on the Examiner. Applicants submit that a search and examination of all claims may be made without imposing a serious burden on the Examiner. A search directed to a method of inhibiting the growth of pathogenic strains in the gastrointestinal tract of a human in need thereof comprising administering pediocin-producing pediococci to said human (Group I) would be coextensive with a search for an isolated pediocin-producing pediococcus (Group II). Further, an important advantage in pursuing just one application encompassing all of the invention groups cited by the Examiner is that the examination work of the U.S. Patent and Trademark Office would be simplified, insofar as duplication of searching effort would be eliminated.

Accordingly, the restriction requirement will serve no purpose other than to unfairly and improperly require Applicants to pay duplicative PTO fees to obtain patent protection for their invention.

Further, the Examiner asserts the following with regards to the distinctness of Groups I-IV:

"The inventions listed as Groups I-VIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding technical feature for the following reasons: The technical feature linking Groups I-IV appears to be pediococcus. However, Lindblom *et al.* (WO 97/29645) discloses an animal feed additive that comprises *Pedococcus acidilactici* (see abstract)."

See Office Action at page 3.

Applicants respectfully ask for clarification of the restriction requirement. The Examiner initially refers to "Groups I-VIII" in the passage cited above. However, the Office Action listed only four groups. See Office Action at page 2. Applicants request immediate notification if additional groups are included in the restriction requirement but not listed in the Office Action.

Applicants respectfully assert that the special technical feature linking the Groups is a pediocin-producing pediococcus, which is undisclosed in Lindblom *et al.* The

Application No. 10/560,864
Paper Dated: July 31, 2008
In Reply to USPTO Correspondence of July 1, 2008
Attorney Docket No. 0470-053605

International Bureau has already acknowledged that Lindblom *et al.* does not concern a pediocin-producing pediococcus.

In addition, Applicants submit that claim 36 should not be regarded as a separate group (Group III). Claim 36 is dependent on claim 35, and thus restricts the health-promoting composition to "further comprising one or more pediocin, probiotics, prebiotics and immunoglobulins, or mixtures thereof." Hence, claim 36 is still limited to a health-promoting composition comprising the pediococcus of claim 33, which is the subject of the search. As a result, there is no undue burden for the Examiner to link Group II with Group III.

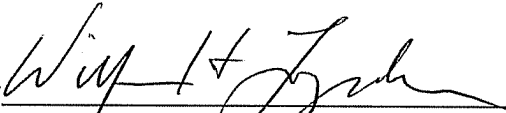
Accordingly, Applicants respectfully request that the restriction requirement be withdrawn at least with regards to Groups I-III and that all Groups be examined at this time.

Applicants expressly reserve the right to file one or more divisional patent applications on any of the non-elected groups or species as identified in the Office Action.

Examination of pending claims 17-38 is hereby respectfully requested.

Respectfully submitted,

THE WEBB LAW FIRM

By 

William H. Logsdon
Registration No. 22,132
Attorney for Applicants
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com